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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 August 1991, at 3 p.m.

Chairman: Mr. JOINET
later: Mr. HELLER

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

1. The CHAIRMAN invited members of the Sub-Commission to consider the document on the preparation of the joint meeting of the Sub-Commission and the Committee on the Elimination of Racial Discrimination, which had been submitted by the Officers and had just been circulated.

2. Mr. EIDE expressed the hope that the meeting would genuinely further the consideration of questions and would not simply be a courtesy meeting. Questions of interest to the two bodies must be tackled. For that purpose, sufficient time should be set aside for consideration of agenda item 3 - Discussion on issues (items) of common interest - following a regard review of items 1 and 2. Reverting to his proposals on the topics to be dealt with, he hoped that a joint survey would be carried out on the new forms of racism and racial discrimination, on the relationship between protection against all forms of discrimination and other human rights and on the effectiveness of international machinery in that field. He would particularly like substantive questions, and not merely of questions of form, to be dealt with.

3. The CHAIRMAN explained, with respect to the organization of the meeting, that it was proposed that the members of the two bodies should be seated in English alphabetical order and that the meeting should be a public one, in which only members could take the floor. The Chair could be taken in turn, but the Officers would like the Sub-Commission to have a dominant position. Interpretation would naturally be provided in the six official languages and the discussions would be reflected in the report of the Sub-Commission prepared by Mr. Guissé as well as in the summary records of the meetings of the Sub-Commission. On the question of the agenda, the Officers had considered it premature to tackle questions of substance as early as the first meeting, as had been suggested the previous year. Since the question of whether or not the coordination between the two bodies should be institutionalized had not been settled, the Officers proposed that a time-limited target should be set in that connection, namely, the 1993 World Conference on Human Rights. It was only after that time that it could be decided whether or not such coordination should be continued. Lastly, the Officers had considered that in view of the little time available, it would be preferable initially merely to list the issues of common interest rather than to study them in depth.

4. Mr. ALFONSO MARTINEZ said that the three items of the proposed agenda, and particularly items 2 and 3, entirely met the objectives of the joint meeting. In order to ensure coordination between the Sub-Commission and the Committee on the Elimination of Racial Discrimination, it would be useful to establish a joint working group for the purpose. It must be borne in mind that every two years, the sessions of the Sub-Commission and of the Committee took place concurrently in Geneva, and advantage should be taken of that opportunity to strengthen such coordination. Consideration might also be given to continuing it during the session of the Preparatory Committee for the

1993 World Conference. It should be simple to compile a list of issues of common interest, and he would be prepared to submit a few ideas on the subject to the Officers.

5. Mr. van BOVEN said that, in his view, item 3 of the proposed agenda was by far the most important item. It was precisely because the Sub-Commission and the Committee were dealing with certain identical issues that the organization of a joint meeting between the two bodies had been envisaged. It should therefore be focused on those questions. He reserved his position on agenda item 2 concerning coordination in the form of a joint contribution to the World Conference in 1993 since, although it was true that the Committee on the Elimination of Racial Discrimination dealt with questions that were also within the Sub-Commission's competence, the same could be said of other bodies established under international instruments, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee Against Torture and even the Committee on the Rights of the Child. He thus could not see why similar arrangements should not be made with those other bodies. He wondered, therefore, whether it was really advisable to establish a joint working group.

6. The CHAIRMAN recalled that it was merely proposed to list the issues of common interest, bearing in mind that the meeting would last for only three hours and that it was difficult in so short a time to deal with questions of substance.

7. Mr. van BOVEN said he realized that time was short, but he considered that some of the issues for discussion suggested by Mr. Martenson in his opening statement nevertheless deserved consideration and it might thus be necessary to go further than a mere compilation of issues of common interest.

8. Mr. EIDE proposed that the order of agenda items 2 and 3 should be reversed. Under item 2, consideration might be given to some of the subjects for discussion mentioned by the Under-Secretary-General, and under item 3 to the possibility of a joint contribution by the Sub-Commission and the Committee to the 1993 World Conference, but solely from the standpoint of issues of common interest to the two bodies, since some of the questions considered by the Sub-Commission were certainly also within the competence of other bodies established under international human rights instruments.

9. The CHAIRMAN said that that was the precise purpose of item 1 of the proposed agenda. When he presented what he had called the Sub-Commission's "identity card", he would make particular reference to the items on its agenda that were also of interest to the Committee and of which there were only some five or six.

10. Mr. ALFONSO MARTINEZ said he was sure that the subject-matter of the present item 3 of the proposed agenda related was the most important and the one that would receive the most attention from participants in the joint meeting. He had no objection to the idea of joint action between the Sub-Commission and other bodies. In the case under consideration, what was needed was not so much to compile issues of common interest to the

Sub-Commission and the Committee as to take a decision, once the compilation had been made, on the practical measures for securing coordination between the two bodies. It was certainly essential to determine first of all what were the issues of common interest. In that regard, he could see nothing against inverting agenda items 2 and 3, as Mr. Eide had proposed, but it was equally obvious that a decision would sooner or later have to be taken on the manner in which the Sub-Commission would coordinate its work with that of the Committee and perhaps subsequently with other bodies as well.

11. Mr. RIVAS POSADA said he was not opposed to inverting items 2 and 3 of the proposed agenda. It would be better to refer to the identification of issues of common interest rather than the consideration of such issues, firstly because there was insufficient time to examine them properly and secondly because it was essential to know precisely on what the subsequent debate would focus.

12. Mrs. KSENTINI supported the proposal to reverse the order of agenda items 2 and 3 and the idea of focusing upon the identification of issues of common interest. The words "le cas échéant à l'intention du groupe de travail commun", might well be deleted from the French text, since she failed to see how the Sub-Commission and the Committee could work together with a view to the preparation of the World Conference before they had even begun to consider issues of common interest. Furthermore, coordination between the two bodies should not be confined to the preparation of the 1993 Conference which should, at the most, be one of the points examined. Lastly, in view of the importance of exchange of information between the bodies, it would be useful to take it into account in the wording of the new item 3, which might read: "Ways and means of ensuring coordination in the work of the two bodies, in particular by exchanges of information on issues of common interest in the field of discrimination".

13. The CHAIRMAN, summing up the proposals made by members of the Sub-Commission on the draft agenda submitted to them by the Officers, said that item 1 remained unchanged. Item 3 became item 2, reworded to read: "Identification of issues of common interest in the area of action against discrimination". Item 2 became item 3, which would read: "Ways and means of ensuring coordination, particularly by exchange of information in the field of action against discrimination", to which might be added the words "possibly in the form of a joint contribution to the 1993 World Conference". The word "possibly" was more flexible and less binding than the word "particularly".

14. Mrs. WARZAZI asked whether it would not be more desirable and prudent simply to delete the new item 3, since it was only after identifying and examining the issues of common interest that a decision could be taken on the kind of joint contribution that the Sub-Commission and the Committee could make to the preparation of the 1993 Conference. If the first joint meeting proved fruitful, others would automatically be organized, during which the joint action that the two bodies might take in the future could be considered.

15. The CHAIRMAN recalled that opinions were very divided about the institutionalization of joint meetings of the two bodies. The Officers had therefore preferred, by way of a compromise, to speak of coordination for a time-limited goal, namely the World Conference. He therefore suggested that that the three items on the proposed agenda should be retained.

16. Mr. HELLER said it was essential to retain the reference to the 1993 World Conference. The preparation of the Conference offered the Sub-Commission on the Elimination of Racial Discrimination an excellent opportunity to establish contacts before initiating any real coordination for the future.

17. Mr. ALFONSO MARTINEZ said that he could see no need for organizing a second meeting, as Mrs. Warzazi appeared to contemplate, to consider whether the first had produced results and whether coordination between the Sub-Commission and the Committee could be envisaged. As proposed by the Officers, it would be better, at the first meeting, after identifying the issues of common interest, to study the opportunities for ensuring subsequent coordination in practial terms between the two bodies, bearing in mind that there was insufficient time to convene a second meeting.

18. Mrs. WARZAZI said that she would refrain from pressing her proposal so as not to prolong the discussion on the question unduly.

19. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission adopted the agenda proposed by the Officers, as amended by members.

20. It was so decided.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)

21. Mrs. HARTLEY (World University Service) said that the organization she represented continued to be deeply concerned about the human rights situation in El Salvador. There was nevertheless cause to welcome both the agreement reached the previous year between the Government of El Salvador and the Farabundo Martí National Liberation Front and the formation in April 1991 of the "Commission of the Truth", as well as constitutional reforms, including the strengthening of the judicial system, the separation of the armed forces from the security forces and the formation of a new civilian police force. The structural problems responsible for so many human rights violations were thus being tackled. The United Nations Secretary-General must be given full support, since he had played a determining role in making such agreements possible. Just a few weeks earlier the United Nations Observer Mission to El Salvador (ONUSAL) had been established. Its initial mandate, for one year, was to verify the accord on human rights. The manner in which the United Nations performed that unprecedented task would show whether the experiment could be applied to other countries.

22. The World University Service was deeply concerned about the activities of the death squads which continued to torture, kill and threaten civilians. Some of the threats had even been directed against staff of the United Nations and other international organizations carrying out human rights work in El Salvador. The World University Service believed that the systematic violations of human rights was due to the high degree of militarization of Salvadorian society. The parties to the conflict should agree to subordinate the armed forces to the civil power, to strengthen civil structures and to reduce the size of the armed forces. Steps must be taken to end the impunity enjoyed by those perpetrating human rights violations. The assassination of Jesuit priests by the armed forces in November 1989 was a clear example of such impunity. Over the past year, there had been numerous human rights violations, including the detention of members of the University of El Salvador and the recent arrest of four students, including the President of the Students' Association. World University Service urged the Sub-Commission to adopt a resolution on the human rights situation in El Salvador which would express concern at the serious violations of those rights; call upon the parties to the conflict to reach agreements that would make the necessary structural changes to reduce the number of violations; and support the United Nations Secretary-General in the unprecedented mission of ONUSAL.

23. World University Service was also deeply concerned at the situation of human rights in Guatemala, and it deplored the fact that despite the aid granted to that country by the United Nations Centre for Human Rights, the situation, far from improving, had deteriorated, with threats and aggression by paramilitary groups and members of the armed and security forces and with abductions, attempted assassinations, murders and enforced disappearances. The civil and military authorities provided no protection to defenders of human rights and took care not to prosecute those responsible for crimes. There were many examples, such as the murder of the Guatemalan anthropologist, Myrna Mack, in July 1990. Mr. Merida Escobar, of the National Police, who had carried out an investigation on the subject, had himself been murdered on 5 August 1991. Dinora Jose Perez Valdez, the leader of a popular movement, had been murdered on 29 April 1991, and Oscar Oswaldo Luna Aceituno, a trade union representative at the University of San Carlos, on 26 June 1991. The forces of repression thus continued to operate with complete impunity.

24. World University Service urged the Sub-Commission to adopt a resolution expressing concern at the serious situation of human rights in Guatemala and at the Guatemalan Government's failure to fulfil its promises to improve the situation; strongly appealing to the Government of Guatemala immediately to halt human rights violations, dismantle the repressive apparatus, investigate all human rights violations, eliminate impunity and prosecute and punish all those responsible for human rights violations; affording protection to persons and organizations working for the defence of human rights and fundamental freedoms; and encouraging the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca to continue to seek peace, taking account of all the items in the Mexico Agreement and appealing to all parties to contribute to the negotiation process.

25. Mr. ILKAHANAF said that, as Mrs. Warzazi had observed earlier, there was possibly no country in which human rights were completely secure from violation. He gave two examples of persons who had been sentenced in the United Kingdom to long prison sentences and had later been released because they had been wrongly condemned. Such denial of justice had discredited the entire British legal system. Some acts nevertheless occurred more frequently in some countries than others and the most serious violations of the past 10 years might have occurred in Somalia. Since 1981, hundreds of thousands of people had disappeared at the hands of the Siad Barre regime and hundreds of thousands of others had been obliged to flee the country. Entire towns were in ruins, including the country's second town. The whole of Somalia's infrastructure had been destroyed and the entire population was living in alarming conditions. Compared with what was happening in Somalia, the situation in Cambodia appeared rosy. The regime of Siad Barre, who had been forced to go to ground, had banned television and the press. Now in hiding, he remained free to attack the nomads and, just like Pol Pot, might one day return to power. The few towns that had been spared were infested with mines. The British company responsible for mine clearance reported some 80 deaths daily.

26. He would consider his statement incomplete if he failed to refer, on the one hand, to the rights of the Palestinians and, on the other, to those of the black population living under the apartheid regime in South Africa. While the hopes for peace in the Middle East were to be welcomed, it must be admitted that Israel was raising obstacles to the peace process and that the settlement of peoples from Eastern Europe in the occupied territories was taking place at the expense of the Palestinians. On the question of South Africa, he recalled the statement he had made under agenda item 5 in order to emphasize that the steps taken by the regime were inadequate to justify the lifting of sanctions. While any measure that could bring apartheid to an end must be warmly welcomed, it could already be seen that what the regime gave with one hand it took back with the other. It was thus well to remain extremely vigilant.

27. He agreed that underdevelopment and the existing economic order contributed to instability and might be at the root of human rights violations, but such violations were, above all, imputable to a refusal to respect freedom of thought, expression, religion and, in short, all the freedoms that were a sign of democracy. Democracy and freedom were irreplaceable and it was for them that a human being would sacrifice everything, even his life. It was democracy that allowed the effective realization of human rights. The international community must exert pressure where needed and must also give assistance to States which demonstrated an intention to improve the human rights situation. He shared Mr. Eide's view, however, that when no improvement was in sight, pressure must be intensified to the point of refusing to provide assistance, bearing in mind, for example, that during the past 10 years Somalia had used the assistance provided by the international community to strengthen its military power and purchase arms on the black market.

28. Lastly, he referred to the highly sensitive question of humanitarian intervention. Although that type of intervention had a political aspect, the humanitarian aspect existed none the less. He understood the concern of those who objected to that kind of intervention, as State sovereignty must certainly be protected, but it was also true that the concept of sovereignty could be used for political ends, and there again Somalia was an example. Could anyone close his eyes to or look up with indifference, at what was happening, and did any individual or group of individuals have the right to destroy a country? Those were questions that must be asked and that must be taken into account with other consideration . The only way of replying to them was to carry out a study, and he hoped that would be done.

29. The CHAIRMAN, after recalling Mr. Hatano's proposal that government observers should take the floor after the NGOs to enable them to combine their replies, gave the floor to Mr. Al Douri, observer for Iraq. The Sub-Commission would proceed in that way without however making a hard and fast rule.

30. Mr. AL DOURI (Observer for Iraq) said that he did not wish to make a statement but to exercise the right of reply to two NGOs that had referred to the situation in Iraq, namely, Amnesty International and the Arab Organization of Human Rights. Amnesty International was known for its zeal in defending human rights. Many peoples placed all their hopes in that organization, but he would have liked it just for once to refer to the fate meted out to the Iraqi people, with their Sunnis, Shiites, Muslims, Christians and all their ethnic groups, by the blockade imposed on Iraq. At a time when a new situation was taking shape in Iraqi Kurdistan, and when a constructive dialogue was being entered into between the Iraqi Government and the representatives of the Kurdish parties in Iraq, multipartism and the rights of the press were strengthening human rights in that country. No discrimination was practised on ethnic grounds in Iraq. If any claim was made to the contrary, that was either because of a misunderstanding of the situation or because of an intention to divide the communities. At a time when the arrival in Iraq of Amnesty International's Special Rapporteur was awaited and when Iraq had facilitated his mission, would it not be prudent to wait and see how Iraq would collaborate with Amnesty International?

31. He had expected a more realistic statement from the Arab Organization of Human Rights. In fact, an organization that was an element of the Iraqi opposition, which had spoken through it. He could not fail to be astonished at the fact that the representative of that organization had barely referred to the difficulties Iraq was facing as a result of the blockade imposed upon it.

32. Mrs. LACOURT (International Federation Terre des Hommes) recalled her organization's statement the previous year on the situation in Cambodia and the agreement on an outline plan for a global political settlement concluded by the five permanent members of the Security Council. She further recalled the slow rate of progress and the statement her organization had made in the Commission on Human Rights. In June 1991, the situation had moved considerably in the direction hoped for with the rapprochement between

the two main Cambodian political leaders, Prince Sihanouk and Mr. Hun Sen, Prime Minister of the Government of Cambodia. All the parties had, moreover, agreed on an indefinite cease-fire and had undertaken to forgo all foreign military aid. While welcoming that progress and the new climate that had prevailed since the fighting had stopped, it was essential to recognize that the situation was fragile and to appeal to the Sub-Commission to be vigilant. Unless specific steps were taken, a durable peace was uncertain. Everything possible must be done to avoid a repetition of the tragedy. The dangers had not disappeared, and the misgivings in that regard were entirely justified. Specific preventive measures to allay those fears already appeared in the initial outline plan.

33. She drew attention to the question of training in rights and freedoms, and recommended that a substantial educational effort should be directed at a people which had never known political pluralism. All international bodies - including the Centre for Human Rights, the Human Rights Division of UNESCO, UNICEF and the International Committee of the Red Cross - and non-governmental organizations would have to cooperate in that effort. Her organization considered the forthcoming special mission to Cambodia essential for determining the actual human rights situation. Specific proposals could arise out of the results of that mission and should be adopted before the forthcoming Paris Conference on Cambodia was convened. Recalling the horror of the mutilations and amputations occurring in such vast numbers day after day because of the millions of mines strewn throughout the country, she said that as a result of the indefinite cease-fire, a large-scale mine-clearance operation could now be planned. Various Governments and organizations had already offered their assistance.

34. Her organization hoped that the Sub-Commission would adopt measures to secure the participation of all United Nations bodies in any initiative that could promote the peace process in Cambodia; to further a durable political settlement and the establishment of a democratic regime and propose the adoption of any measure that could prevent a further tragedy; to send a United Nations mission to study the situation concerning respect for human rights and formulate and transmit proposals to the co-chairmen of the International Conference in Paris; to invite: the Secretary-General of the United Nations to transmit a request for humanitarian aid to the international community, all competent bodies to organize appropriate human rights training, Governments to launch a mine-clearance operation in Cambodia, and members of the Supreme National Council to sign a formal commitment prohibiting any new mine-laying operations in the country; and, lastly, to include in the provisional agenda for its forty-fourth session an item entitled "The situation of human rights in Cambodia and in any camp in which Cambodians are living".

35. The views she had just expressed were shared by many international organizations present.

36. Mr. Heller took the Chair.

37. Mr. DUPRET (International League for the Rights and Liberation of Peoples) said that for more than two years the Permanent Peoples' Tribunal had been investigating the impunity with which crimes against humanity were committed in Latin America. More and more Governments of Latin American countries were using a variety of seemingly legal mechanisms and methods to avoid punishing those guilty of such crimes. Those Governments were thus acting in flagrant violation of international law and more particularly of the international instruments established within the United Nations system under which States had an obligation to prosecute, arrest, extradite and punish the perpetrators of crimes against humanity considered to be imprescriptible and ineligible for amnesty. At its various sessions, the latest of which had taken place in Bogotà in April 1991, the Peoples' Tribunal had studied those many procedures, including primarily, the amnesties and pardons granted to military and police officers responsible for crimes against humanity under decrees and acts, particularly in Chile, Argentina, Guatemala, Brazil, Uruguay, El Salvador and Honduras. In other countries, while not declaring a general amnesty, the Governments had adopted legislation with similar effect.

38. In Colombia, members of paramilitary groups had thus benefited from various measures ranging from remission of sentence to exoneration from all responsibility and to authority to join the State security corps. Oscar de Jesus Echandia Sanchez, ex-mayor, founder of the paramilitary group "M.A.S." and perpetrator of many crimes had, through that legislation, become a member of the State Security Department. It would further be noted that members of the armed forces and police forces implicated in crimes against humanity were generally tried by military tribunals whose competence and impartiality in the matter were keenly disputed, as indicated by the Working Group on Enforced or Involuntary Disappearances in its report on its visit to Colombia in 1988. In Peru, where various State bodies had obviously abandoned their supervisory and protection functions, the power of the military tribunals had been strengthened by Act No. 24150, whereby the civil authorities had been replaced by politico-military commands in areas where a state of emergency had been declared.

39. The doctrine of national security and the theory of low-intensity conflict taught in military schools could only encourage certain practices such as enforced disappearances and the formation of civilian groups to carry out criminal activities against the population, enabling State agents participating in them to remain unidentified. Paramilitary and self-defence groups and frequently hired killers in Colombia, the civil patrol service in Guatemala and the paramilitary commandos and civil defence committees in Peru were all products of the same schooling. The fact that Governments made no commitment to punish the State agents responsible for those crimes was proof of their political will to guarantee impunity. In Colombia, for example, where 2,533 political murders and 239 disappearances had been reported between 7 November 1989 and 31 December 1990, only 105 members of the armed forces had incurred administrative punishment, for reasons unconnected with human rights violations, and only 15 officers had been cashiered for their involvement in cases of murder, disappearances and torture. Army officers guilty of human rights violations were instead awarded medals, promoted to new commmand functions or sent abroad to international training centres or as members of diplomatic missions. State manipulation of

information with the large-scale complicity of the media also encouraged impunity. The campaign against drug-trafficking often served as a pretext for outrageous repression of the public at large in Colombia and Peru and had served to justify the invasion of Panama and the bombing of its civilian population. Lastly, the passive attitude, if not complicity, of members of the international community with regard to human rights violations committed by Latin American States with which they maintained fruitful economic relations must not be overlooked. For example, the Belgian Government, which had authorized the conclusion of arms sale contracts with Colombia, had not protested or demanded that justice should be done when the Belgian priest Daniel Gillard had been murdered by the Colombian army; and the Israeli Government had refused to extradite Yaïr Klein, a retired colonel, who was accused of having trained paramilitary groups.

40. Through such deliberate impunity, it was clearly intended to suppress any protest by a population subjected to the unjust economic policies - themselves tantamount to crimes against humanity - practised in particular by the International Monetary Fund and the World Bank. The Sub-Commission should study those unpunished economic crimes, which were responsible for the growing numbers of young people with no future in the major cities of Latin America. As for accepting impunity as a "necessary evil", that was tantamount to depriving more and more people of any protection against government abuses and to rejecting the minimum standards of civilized coexistence. Impunity for crimes against humanity was not a problem of the past but of the present, and one that must be dealt with, since it was incompatible with democracy.

41. The International League for the Rights and Liberation of Peoples urged the Sub-Commission to work for the adoption of an instrument to eliminate the practice of enforced disappearances; to press the Latin American Governments to do away with the laws and structures that encouraged impunity and to restrict the competence of the military tribunals to exclusively military offences; and to prepare a working paper on impunity for submission at its forty-fourth session.

42. Mr. TEITELBAUM (American Association of Jurists) expressed his astonishment at the fact that article 28 of the new Constitution just promulgated in Colombia stated that there were no imprescriptible penalties, although everyone was aware that crimes against humanity were imprescriptible. Moreover, article 213 conferred excessive powers on the President of the Republic with respect to the declaration of a state of emergency. Article 91 was even more disturbing in that it granted impunity to military personnel by allowing them to take refuge behind the orders of their superiors. That provision was wholly incompatible with article 2 (3) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and with article 4 of the Inter-American Convention for the Prevention and Repression of Torture, and represented an enormous step backwards. It had long been recognized that the duty of obedience could not justify morally reprehensible acts. That principle had been confirmed, in particular, by the Nuremberg Tribunal following the Second World War and by the International Law Commission in its draft code relating to crimes against peace and security. The Sub-Commission could thus not pass over in silence a constitutional text which guaranteed impunity to those who violated human rights.

43. In Peru, Guatemala and El Salvador, the civilian population was subjected to atrocities by the armed forces. In Peru, the army had caused the disappearance of a number of candidates in the forthcoming municipal elections. Furthermore, following the murder of some 30 peasants in 1988, everyone who had testified before the Prosecutor in charge of the case had been systematically murdered. Himself under threat of death, the judge in question had been obliged to seek asylum in the United States. In Guatemala, a police officer who had investigated the murder of the anthropologist Myrna Mack Chang had himself been murdered on 5 August 1991 for having concluded in his report that the motive for the crime had been political and that the military authorities had been implicated. In El Salvador, too, the civilian population was subjected to many acts of violence. The investigation into the murder of six Jesuit priests of the Central American University was making no headway, although it was known precisely that the perpetrators of the crime belonged to the Atlacatl battalion and had been previously trained by members of the United States special forces.

44. With Nelson Mandela's release in South Africa, Morocco was holding the political prisoner of longest standing in Africa, Abraham Sarfaty, in prison since 1975 because he had defended the independence of Western Sahara. The Sub-Commission should call for his immediate release. The American Association of Jurists also urged the Sub-Commission to follow closely the investigation into the murder of Shahpour Bakhtiar, as it had done in the case of Kazem Radjavi, since there could be little doubt that the Iranian Government had been implicated. The world was horrified at the genocide of the Kurdish people by the Iraqi regime and the Turkish Government. The Sub-Commission should show its independence by setting aside all geopolitical considerations in considering the rights of the Kurdish people. Thousands of Iraqi civilians had also been victims of so-called "surgical" precision bombing during the Gulf war, and the survivors were now in a tragic health situation. The Sub-Commission, which the previous year had shown great feeling about the tragedy of the European hostages held in Iraq in violation of the elementary principles of international law, should now show the same feeling and work for far-reaching humanitarian action to assist the Iraqi people.

45. Mrs. BAUTISTA said that the concept of human rights now embraced not only civil and political rights but also economic, social and cultural rights. It must unfortunately be acknowledged that all those rights were still being violated in various parts of the world. Many sources of information reported irregular legal procedures, arbitrary arrests, summary executions, massacres, the suppression of freedom of speech and expression, religious intolerance and the denial of the right of people to provide for themselves. Even though it was impossible for members of the Sub-Commission to read all those documents, they could not ignore them.

46. As had been observed not only by the experts themselves but also by government observers and non-governmental organizations, the Sub-Commission was now concerned with the causes of those violations, which could be human acts or natural disasters. Although little could be done against natural disasters, Governments must not take advantage of them to impose iniquitous

measures on disadvantaged peoples. They should instead give all necessary assistance to people who were forced to leave their homes and who found themselves in a particularly precarious situation.

47. The minorities dispossessed of their lands, their cultural identity and their means of subsistence turned to the Sub-Commission to help them to avoid complete destruction and to give their women and children, in particular, hope for a better future. In many areas of the world, there was continued recourse to violence in order to impose certain policies or measures in the name of international cooperation. Many people had thus been induced to leave their countries, primarily for the Middle East or Europe. The lot of those migrant workers had already been discussed at length in the Sub-Commission, but the need to introduce certain reforms in the host countries must be emphasized, in the name of the brotherhood of man. She hoped that by its action in that regard the Sub-Commission would help to improve the situation of those victims, whose only hope lay in United Nations instruments and resolutions. It was therefore essential to speed up the process of implementation of the relevant instruments and resolutions and to ensure that States parties fulfilled their commitments in that regard. The interest of the international community should be mobilized in favour of those particularly disadvantaged groups, who justified pressure on the part of United Nations bodies, countries and non-governmental organizations. That, however, required the cooperation of all concerned and a review by the developed countries of their economic policies.

48. Every effort must be made to prevent the use of weapons of mass destruction in order to settle disputes, by promoting dialogue and possibly by applying sanctions. The recent conflict to secure respect for the sovereignty of a small nation and the withdrawal of the invaders had led to other large-scale violations of human rights, particularly those of indigenous populations, and to environmental pollution and destruction of marine resources. Peace thus remained, for the time being, an inaccessible dream.

49. Mr. HORTA (Movement Against Racism and for Friendship Among Peoples) said that East Timor, where he had been born, had until 1975 been a peaceful region supervised by a negligent colonial power, Portugal. In 1975, the right to self-determination of the people of East Timor had been recognized by the international community. Shortly before that time, he had had an opportunity to meet the Indonesian Minister for Foreign Affairs and it had been understood that an independent East Timor would not compromise Indonesia's stability and that it would apply to join the Association of South East Asian Nations. The climate of euphoria which had reigned with the recognition of the right to self-determination of East Timor had, however, dispersed rapidly. Although the Security Council had on a number of occasions called upon the Indonesian authorities to withdraw all their troops from the territory of East Timor, its occupation continued and the population was still unable to exercise its right to self-determination. Nor was there any improvement in the human rights situation, and massacres continued. In the light of that situation, the Movement Against Racism and for Friendship Among Peoples deplored the fact that the Indonesian Government had not invited the Special Rapporteur on the question of torture to visit East Timor and had not invited the Sub-Commission

to send a mission to the territory. Lastly, he hoped that, similarly to what had been done in the case of some other countries, including Ethiopia, Indonesia would organize a referendum on East Timor.

50. Mr. ROSSI (International Association for the Defence of Religious Freedom) said that countries that refused to accept ideological or religious pluralism inevitably violated the human rights of those with a different view. It had rightly been emphasized that differences should not merely be tolerated but allowed, and even encouraged, in order to avoid an undesirable uniformity. All States should therefore recognize such differences while treating citizens on an equal footing without any distinction. Ideological pluralism should not merely be accepted in all countries but recognized by law and no view of the world should be imposed to the detriment of other views.

51. History bore witness to mass violations of human rights in countries where a single ideology prevailed. While it was gratifying that the countries of Eastern Europe had recently decided to adopt ideological pluralism, there unfortunately a religious totalitarianism was evolving that threatened in the Islamic Republic of Iran and Saudi Arabia, for example, international equilibrium and the human rights systems established by the United Nations. The situation in the Islamic Republic of Iran was well known to the Sub-Commission, which had already adopted resolutions on the subject. As shown in Amnesty International's recent report, however, human rights violations were still taking place in that country. The Baha'i were still outlawed and dissidents were persecuted even outside the country. Suffice it to refer to the call for the murder of the author Salman Rushdie, the murder of the Japanese translator of his book, and the murder of Professor Kazem Radjavi, whom the Sub-Commission had described as an ardent defender of human rights. The Sub-Commission should thus continue to follow the situation of human rights in the Islamic Republic of Iran and take the necessary measures.

52. Saudi Arabia had no written constitution and its legal system was based on the legal regulations of the only recognized religion. It was the only country in the world in which all religions but one were prohibited. There were neither political parties nor assemblies elected by citizens and all forms of political expression were prohibited except those favourable to the regime. The press was severely controlled, there were no formal democratic institutions and the majority of citizens had no say in the choice of leaders or in changing the political system. The formation of trade unions and the exercise of the right to strike were prohibited even though Saudi Arabia had been a member of the International Labour Organisation since 1976. There was no non-governmental organization concerned with human rights. The law was not the same for everyone, however, and members of the Royal Family and other powerful families were not subject to the same legal obligations as other Saudi citizens. In short, human rights were systematically violated in Saudi Arabia. He hoped that the Sub-Commission would draw the attention of the Commission on Human Rights to the situation in that country so that appropriate measures could be taken.

53. Mr. TOTSUKA (International Educational Development) said that despite statements by the Human Rights Foundation of Turkey, from numerous speakers in the Commission on Human Rights and the Sub-Commission, and reports in the press, etc., the international community, which was deeply concerned about the fate of the Kurdish peoples in Iraq, had neglected the Kurds in Turkey whose human rights had been trampled under foot by the Turkish Government and its military and security forces. That Government argued that the question was one of terrorism and banditry and not of an armed conflict to which the 1949 Geneva Conventions and the 1977 Protocols applied. According to a mission sent to Turkey in June 1991 by International Educational Development, which had used the classic criteria of customary international law to determine the nature of the conflict and evaluate the application of human rights and of humanitarian law, there was indeed an armed conflict. The Turkish Government was, in fact, using its armed forces and not its police force in south-east Anatolia; members of Parliament had acknowledged that there was a war; and the PKK (Turkish Workers Party) had its own well-structured military forces, the ARGK, under central command. Those forces, which were highly disciplined, wore military insignia or uniform, had their own flag, and controlled much of the region, where they had a number of bases, and they clearly had the capacity to implement their humanitarian law obligations. It was patently obvious that the international community should evaluate, in the light of humanitarian law, the widespread violations which the investigation carried out by the mission had been able to verify. He urged the Sub-Commission to give the highest priority attention to that situation.

54. In Sri Lanka, the armed conflict between the Tamil people and the Government continued unabated. Sri Lankan and Tamil human rights organizations working hand in hand had stated that the Sri Lankan Government was interpreting the failure of the Western democracies to censure those human rights violations, and every item of foreign aid, as an endorsement of its actions, and that that had a demoralizing effect on the victims. For 40 years, the Sinhalese majority in whose hands the British colonizers had left the Government in 1948 had been endeavouring to impose its rule on the Tamil people. The Government had established Sinhalese settlements in Tamil areas, had declared Sinhalese to be the only language, had discriminated against Tamils in employment, education and resources and had resorted to State violence in an attempt to subdue them. Sri Lanka was now living under a racist regime. While refraining from describing all the sufferings and human losses sustained by the Tamil people, he wished to recall a number of recent events, including the massacre of 170 Tamil civilians by the Sri Lankan armed forces, the bombing of Jaffna Hospital by the Sri Lanka air force two days after its had been reopened by the International Committee of the Red Cross, and the attack on a medical team of Médecins Sans Frontière. It was surprising, after all the many statements made by the most credible non-governmental organizations, and the reports of numerous high-level parliamentary investigation committees that the Sub-Commission and the Commission had paid scant attention to the situation in Sri Lanka. That situation justified invoking the principle of self-determination of peoples and applying the rules governing wars against racist regimes by populations exercising its right to self-determination. The international community must invoke the right to self-determination as the last resort and the only means of guaranteeing the human rights of minorities subsumed into larger States and persistently denied the enjoyment of their human rights.

55. Mr. COE (National Aboriginal and Islander Legal Services Secretariat) denounced the flagrant violations of the human rights of Australian Aborigines which, despite the statements of the Federal Minister for Aboriginal Affairs in the Working Group on Indigenous Peoples and the Committee on the Elimination of Racial Discrimination, were continuing unabated while the rest of the country remained unconcerned and the Federal Government silent. A delegation of participants in the seventh General Assembly of the World Council of Churches, held in Canberra in February 1991, had investigated the situation and concluded that racism against Aborigines was genocidal. There were virtually no means of redress. It was interesting to note that the Australian Government had announced its intention of acceding to the Optional Protocol to the International Covenant on Civil and Political Rights. That would provide an independent forum in which to require those responsible to account for the violations of the civil and political rights of the Aborigines. The Government, however, forgetful of so many promises, had shown so little willingness to fulfil the obligations it had contracted by ratifying human rights treaties that there seemed little ground for optimism. Human rights were certainly guaranteed by a maze of legislation and there was a Federal Human Rights and Equal Opportunity Commission, but its functions were limited and it had no powers to hold an inquiry in the nature of a hearing or to take binding decisions.

56. The Federal Government had failed to discharge its obligations under the International Covenant on Economic, Social and Cultural Rights, such as the obligation to take measures for the prevention of alcohol abuse and for the care of alcoholics. It was too ready to invoke "cooperative federalism" in order to avoid taking action when responsible agencies at the State level failed to respect international standards. It had the necessary power to take such action and, moreover, the Royal Commission of Inquiry into Aboriginal Deaths in Custody had confirmed that a State could not invoke its domestic law in order to avoid its international law obligations. The Government thus had a duty not to deny responsibility for the Aboriginal peoples of Australia. That non-accountability had been most conspicuous in the phenomenon of death in custody. In its 5,000 page report, the Royal Commission of Inquiry had provided evidence of all kinds of breaches of the regulations of the police and prison services, including unlawful arrest, lying under oath, fabrication of evidence and denial of medical care, on which no action had been taken. Even perjury by police officers before the Royal Commission of Inquiry had not led to action, the pretext being that it was "inevitably difficult to prove". The cynicism of the authorities with respect to the conclusions and recommendations of the Royal Commission of Inquiry was part of an attitude going back to the time of the colonization of Australia. Racist violence was endemic and racist attitudes were to be found even in the institutions and services that were supposed to help the victims of racism. Aborigines continued to be portrayed as a law and order problem and as being outside accepted social standards - an attitude that gave some legitimacy to acts of racist violence, of which police violence was the most extreme and most disturbing. In that connection, 88 per cent of Aboriginal juveniles interviewed had claimed that they had been subjected to such violence and attention should be drawn to the inordinately high proportion of police officers in Aboriginal towns and of paramilitary units in rural Aboriginal communities.

57. Mr. RODRIGUEZ MEJIA (Andean Commission of Jurists) described the extremely serious human rights situation prevailing in Colombia despite the peace process entered into by the Government with the guerrilla groups, the bringing to justice of powerful drug traffickers and the entry-into-force of a new Constitution. The difficulties and the goodwill of the Colombian Government had probably prevented the Sub-Commission from saying anything that would imply that little faith was placed in those efforts. The situation in Colombia was worsening, however, particularly with respect to the fundamental right to life. The number of people who had died or disappeared for political reasons since 1985 was 3,000 annually on average, and the majority of them had not been victims of drug traffickers or guerrillas but of paramilitary groups and State agents not under the proper control of the authorities and still operating under rules enacted during the state of siege. The Sub-Commission could help to improve that situation if it decided to cooperate with the Colombian people and urge the Government to implement the recommendations made by the Working Group on Enforced or Involuntary Disappearances and by the Special Rapporteur on summary or arbitrary executions following their visits to Colombia in 1988 and 1989 respectively.

58. Impunity was one of the main characteristics of that situation. It was true that members of the armed forces had been punished for involvement in human rights violations, but that was not enough. Impunity was evident in serious cases of mass murder, enforced disappearance, torture and summary or arbitrary execution, such as the assassination of three presidential candidates and the disappearance of a human rights defence lawyer. In a number of cases, no legal proceedings had been instituted, while in others those responsible had not been named, and in many instances the case had been brought before the military criminal court. The military jurisdiction was one of the major factors of impunity. The number of dismissals applied for, and particularly the number granted, was absurd when compared with the number of complaints made against members of the national police or military forces. He quoted extracts from paragraph 67 of document E/CN.4/1990/22/Add.1, in which the Special Rapporteur on summary or arbitrary executions recommended that the Executive should dismiss all members of the armed forces and the police who had taken part in or supported paramilitary groups. The Sub-Commission would do well to urge the Colombian Government to comply with that recommendation. The President of the Republic had the power to do so without the intervention of the Government Attorney or of the judges, who were doing their utmost to prevent sanctions being applied.

59. As he had indicated at the outset, some action had been taken during the first half of 1991 that might augur well, but the human rights situation had barely changed. That was because neither the Government nor the major political forces wanted to face up to what was a fundamental factor in those continuing violations, namely the armed forces, whose structure had in no way been changed by the new Constitution and whose military criminal jurisdiction even extended to members of the national police - a fact that could only extend the application of impunity. So long as those forces protected or even encouraged the intolerance of groups opposed to the political reforms provided for in the new Constitution, the summary or arbitrary execution of individuals or entire groups would continue.

60. Complex though it was, the human rights situation in Colombia was not confused. It was possible to identify those responsible and unravel the connections linking some of them. The drug trafficking problem must not be allowed to cloud the issue and the Colombian State and its agents must not be seen as poor victims deserving unconditional support. Nothing would be more damaging to respect for human rights in that country. In order to follow up the Special Rapporteur's recommendations, a Commission expert should be appointed to help the Government and the Colombian social organizations to adopt effective corrective measures, to implement United Nations recommendations and to formulate new constitutional norms concerning justice and human rights in accordance with the Universal Declaration and the International Covenants.

61. Mr. Joinet resumed the Chair.

62. Mr. DESPOUY paid a tribute to Mrs. Henriette Taviani, former UNHCR representative in Paris, who had died the day before. A person who was well known in international circles, Mrs. Taviani had unremittingly defended the cause of political refugees, first at the head of UNHCR in Paris and then, following her retirement, in the service of an important NGO, "France terre d'asile". At a time when political asylum was in a state of crisis, Mrs. Taviani's life could serve as an example to those still striving for respect for the rights of refugees. It justified the fact that France still retained the prestigious title of "Terre d'asile" - country of asylum.

63. Mrs. FELLAR (Office of the United Nations High Commissioner for Refugees) associated UNHCR with Mr. Despouy's tribute. For UNHCR, Mrs. Taviani had consistently been a valued colleague, first in Paris, then as a member of an influential non-governmental partner of HCR. Throughout her life, she had been extremely close to refugees, whose rights she had defended with great courage and eloquence.

64. The CHAIRMAN said that he had known Mrs. Taviani well and considered himself to be her spiritual son. During his last conversation with her, she had recalled that among the many refugees with whom she had been concerned, more than 50 had gone on to fulfil the highest posts in various States, and had concluded that to work with refugees was also to contribute to the course of events.

The meeting rose at 6.05 p.m.